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No. 80 Original

**In the
Supreme Court of the United States**

October Term, 1979

STATE OF LOUISIANA,

Plaintiff,

V.

STATE OF MISSISSIPPI, ET AL.

Defendants

**MOTION TO FILE COMPLAINT, COMPLAINT
AND APPLICATION FOR STAY ORDER,
AND BRIEF IN SUPPORT OF MO-
TION, COMPLAINT AND APPLI-
CATION FOR STAY ORDER**

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No. _____ Original

**In The
Supreme Court of the United
States**

OCTOBER TERM, 1979

STATE OF LOUISIANA,

Plaintiff,

V.

STATE OF MISSISSIPPI, ET AL

Defendants

**MOTION FOR LEAVE TO FILE COMPLAINT
AND FOR STAY ORDER**

The State of Louisiana, appearing herein through the Honorable William J. Guste, Jr., its Attorney General, acting in pursuance of the authority and powers vested in him by Article IV, Section 8 of the Louisiana Constitution, respectfully states that:

1. A portion of the boundary between the States of Louisiana and Mississippi common to the Parish of Concordia, Louisiana, and the County of Adams, Mississippi, is in dispute.

2. This boundary dispute between the States mentioned is subject to the exclusive original jurisdiction of the Supreme Court of the United States.

3. An action is presently pending in the United States District Court, Western Division of the Southern District of Mississippi, entitled *Avery B.*

Dille, Jr. vs. Pruet and Hughes Company, (A Partnership), et al, Civil Action No. W79-0069(R), wherein, as shown by Exhibit "B" annexed to the attached complaint, complainant in said civil action is claiming ownership of a portion of lands involved in this boundary dispute contrary to the continued assertion of jurisdiction, dominion and control of said area by the State of Louisiana under its inherent sovereignty.

4. The above referenced action was originally filed in the Chancery Court of Adams County, Mississippi as No. 28,592 on the docket of said Court on June 20, 1979, but was removed by the defendants to federal court on July 20, 1979 all as more fully appears in Exhibit "C."

WHEREFORE, the State of Louisiana respectfully prays that this Honorable Court take original jurisdiction and grant to the plaintiff leave to file its complaint in this Court, and that this Honorable Court issue an order directed to the United States District Court, Western Division of the Southern District of Mississippi placing in abeyance all proceedings in the action entitled, *Avery B. Dille, Jr. vs. Pruet and Hughes, (A Partnership), et al*, Civil Action No. W79-0069(R), pending the conclusion and determination of the matter set forth in this Complaint, and further prays for such orders and process as the Court may deem proper in pursuance of the annexed complaint and application for order.

Respectfully submitted,

/s/ William J. Guste, Jr.
WILLIAM J. GUSTE, JR.
Attorney General
State of Louisiana

GARY L. KEYSER
DAVID C. KIMMEL
Assistant Attorneys General

December
~~October~~, 1979

No. _____ Original

**In The
Supreme Court of the United
States**

OCTOBER TERM, 1979

STATE OF LOUISIANA,

Plaintiff,

V.

STATE OF MISSISSIPPI, ET AL

Defendants

**COMPLAINT AND APPLICATION FOR
STAY ORDER**

The State of Louisiana, appearing herein through the Honorable William J. Guste, Jr., its Attorney General, acting pursuant to the authority and powers vested in him by Article IV, Section 8 of the Louisiana Constitution, instituted this original action against the State of Mississippi, and makes party hereto the following citizen of the State of Mississippi, namely, Avery B. Dille, Jr., an adult resident and citizen of Adams County, Mississippi, and for its cause of action, states:

I.

The original jurisdiction of this Court is invoked under Article III, Section 2, Clause 2 of the Constitution of the United States and Par. (a) Section 1251, Title 28, United States Code Annotated.

II.

The State of Louisiana was admitted into the Union of the United States of America by the Act of Congress found in chapter 50 of the United States Statutes at Large, vol. 2, page 701, approved April 8, 1812, and therein the boundaries of the said State of Louisiana, in the preamble of said Act, were described as follows:

“Whereas, the representatives of the people of all that part of the territory or country ceded, under the name of ‘Louisiana’ by the treaty made at Paris, on the thirtieth day of April, one thousand eight hundred and three (8 Stat. at L. 200), between the United States and France, contained within the following limits, that is to say: ‘Beginning at the mouth of the river Sabine; thence, by a line drawn along the middle of said river, including all islands, to the thirty-second degree of latitude; thence due north to the northernmost part of the thirty-third degree of north latitude; thence along the said parallel of latitude to the river Mississippi; thence down the said river to the river Iberville; and from thence along the middle of the said river and lakes Maurepas and Pontchartrain, to the gulf of Mexico; thence bounded by the said gulf to the place of beginning, including all islands within three leagues of the coast’ ”

III.

By the Act of Congress found in the United States Statutes at Large, vol. 2, p. 708, chap. 57, approved April 14, 1812, additional territory was

added to the then-existing State of Louisiana which additional territory was described in the following language:

"Beginning at the junction of the Iberville with the river Mississippi; thence, along the middle of the Iberville, the river Amite, and of the lakes Maurepas and Pontchartrain to the eastern mouth of the Pearl River; thence up the eastern branch of Pearl River to the thirty-first degree of north latitude; thence along the said degree of latitude to the river Mississippi; thence down the said river to the place of beginning, shall become and form a part of the said state of Louisiana. . ."

IV.

The territory lying adjacent to, and to the eastward of the State of Louisiana, is the State of Mississippi, which latter state was admitted into the Union of the United States of America by the Act of Congress found in the United States Statutes at Large, vol. 3, chap. 23, page 348, approved March 1, 1817, whereby the inhabitants of the western part of the then-Mississippi territory were authorized to form for themselves a state constitution and to be admitted into the Union, the boundaries of the then-to-be-created state being described as follows:

"Beginning on the river Mississippi at the point where the southern boundary line of the State of Tennessee strikes the same; thence east along the said boundary line to the Tennessee River; thence up the same to the mouth of Bear

Creek; thence by a direct line to the northwest corner of the county of Washington 'Alabama'; thence due south to the gulf of Mexico; thence westwardly, including all the islands within six leagues of the shore to the most eastern junction of Pearl River with lake Borgne; thence up said river to the thirty-first degree of north latitude; thence west along the said degree of latitude to the Mississippi River; thence up the same to the beginning."

V.

The effect of this legislation, as to the eastern boundary of the State of Louisiana, was to retain the channel or thread, sometimes known as the thalweg, of the Mississippi River as the original eastern boundary, as far south as the 31st degree of north latitude. Such original eastern boundary from the northeast tip of the State of Louisiana to said 31st degree of north latitude is common with the State of Mississippi.

VI.

Under the law of Louisiana, the State of Louisiana owns the bed of the Mississippi River to the boundary line of the States of Louisiana and Mississippi. Under the law of the State of Mississippi, the riparian owner owns to the boundary line between said states. This Supreme Court of the United States has original jurisdiction of suits to determine the boundaries between states, and of parties adversely asserting title to the property of a state.

VII.

Until recently the primary interest in the determination of the exact boundary line in the Mississippi River between the two states has been as to navigation and fishing rights, and to masses of land where an avulsion has taken place. The discovery and development of subsurface oil and gas has now raised a new and different right and poses to the states involved, substantial and complicated problems.

VIII.

On July 8, 1970, the State of Louisiana, through its Mineral Board, executed an oil, gas and mineral lease to Dave Gammill, designated as Louisiana State Lease No. 5544, covering and affecting the following described lands, located in Concordia Parish, Louisiana:

All of the lands now or formerly constituting the beds and bottoms of the Mississippi River and of all other rivers, creeks, streams, bayous, lagoons, lakes, bays, coves, inlets and any other water bottoms and any arm or tributaries of such water bodies belonging to the State and any other water courses, beds and bottoms situated wholly or partially within the following described area, to-wit:

Beginning at the Northwest corner of Section forty-six (46), Township five (5) North, Range Nine (9) East, Concordia Parish, Louisiana, go East along the Northern boundaries of Sections forty-six, forty-five and forty-four (46, 45 and 44) of the said Township and Range and along an extension of such line to the Northeasterly corner of Section forty-

two (42), Township five (5) North, Range nine (9) East, thence in a Southeasterly direction along the boundary between Sections forty-one and forty-two (41 and 42), Township five (5) North, Range nine (9) East, and along a projection of such Easterly boundary to the intersection of such projected line with Longitude thirty-one (31) degrees, twenty-five (25) minutes North; thence due East to the boundary between the State of Louisiana and the State of Mississippi; thence downstream along the boundary between the States of Louisiana and Mississippi, following the meanderings thereof to a point determined by the intersection with the said state boundary of a line obtained by extending easterly the Southern boundary of Section Thirty-nine (39), Township four (4) North, Range eight (8) East, Concordia Parish, Louisiana; thence West along the line determined by extension of the Southern boundary of the said Section thirty-nine (39), Township four (4) North, Range nine (9) East; thence North along the West boundary of Range nine (9) East to the point of beginning, all as more fully shown on a plat on file in the State Land Office of the State of Louisiana.

A true and correct copy of said oil, gas and mineral lease is herewith attached marked Exhibit "A" hereto and made a part hereof as fully as though herein copied. Said lease is recorded in Book 30, Page 113, Document No. 110439, in the records of Concordia Parish, Louisiana.

IX.

The initial consideration for the execution of said lease was the bonus of \$8,060.00. The primary term of the lease was for three years and the an-

nual rental payment was fixed at \$4,030.00. By instrument dated December 1, 1970, Pruet and Hughes Company became an owner and operator of said lease which instrument is of record in Conveyance Book 35, Folio 151, in the records of Concordia Parish, Louisiana.

X.

Said lease has been maintained by Pruet and Hughes Company and its successors by the payment of the delay rentals and by drilling and obtaining production from said lease, and by the payment of the one-sixth royalty to the State of Louisiana.

XI.

Pursuant to the aforementioned instrument, Pruet and Hughes Company directionally drilled a well (hereinafter referred to as State of Louisiana Well No. 3) from a surface location in Adams County, Mississippi to a point in the State of Louisiana said well being located as follows, to-wit:

From the corner common to Sections 15, 16 and 53 (most westerly corner of Section 15), T8N - R10E, Concordia Parish, Louisiana, go South for 13,212.3 feet; thence East at right angles for 4349.7 feet to bottom hole location in Accretions, T8N - R10E, Concordia Parish, Louisiana, bottom hole location N 60° 53' W for 1966 feet from the surface location.

The bottom hole of said well was then and ever since has been within the confines of the State of Louisiana. Said State of Louisiana Well No. 3 began to produce oil in commercial quantities on or

about January 15, 1972, and has continued to produce oil down to the present.

XII.

The State of Louisiana, through its regulatory authority, has permitted and regulated the drilling of said well, and since its completion, has continued to regulate the production thereof, supervising its allowables, requiring production reports, issuing Certificate of Compliance, creating a drilling unit therefor and otherwise exercising complete jurisdiction over the same. Pursuant to the terms and provisions of said Exhibit "A," royalties have been paid to the State of Louisiana as required by said lease.

XIII.

On the 20th day of June, 1979, there was filed in the Chancery Court of Adams County, Mississippi a complaint styled *Avery B. Dille, Jr. vs. Pruet & Hughes Company, (a Partnership), Henry W. Dille, Richard T. Dille, Chesley Pruet, Robert Mosbacher, Bruce Sciscoe, Dudley J. Hughes, Verne L. Culbertson, Benton R. Vernon, Jr., Dave Gammill, Bates Oil Corporation, R. E. Williams and the State of Louisiana*, and numbered 28,592 on the docket of said Court, a true and correct copy of said Complaint being herewith attached and marked Exhibit "B" and made a part hereof as fully as though copied. As can be seen by Exhibit "B," the complaint seeks to establish a boundary line between the States of Louisiana and Mississippi as in paragraph XVI, where complainant alleges that "the

State of Louisiana being made the party hereto for the purpose of having Complainant's boundary line determined as being established by the Mississippi - Louisiana State line which is the middle of the navigable channel of the Mississippi River."

XIV.

By virtue of the provisions of the Mississippi Code of 1972, Section 53-1-5 and Section 53-1-17, the Mississippi State Oil and Gas Board was created and given broad and specific powers and authority to prevent waste, foster, encourage, and provide conservation of crude oil and natural gas and products thereof, and protect the vested, coequal and correlative rights of owners of crude oil and natural gas. These powers embrace the authority to regulate the day-to-day production practices stemming from the drilling and operation of oil and gas wells in the State of Mississippi, the production of oil therefrom, its measurement, and the issuance of certificates of compliance to purchasers.

XV.

Both the States of Mississippi and Louisiana impose severance taxes on oil production from lands located within their respective boundaries and ad valorem taxes on equipment and facilities used in drilling and production operations. The State of Mississippi imposes contractors' drilling taxes on such operations, and documentary taxes. As a consequence, the State of Mississippi, in addition to the protection due its citizens in the exercise of their alleged ownership and proprietary

rights in and to lands located within said state, has a vested interest in the determination of the bottom hole location of State of Louisiana Well No. 3 and oil being produced therefrom.

XVI.

The area leased to Dave Gammill, described in Exhibit "A" hereto, and now operated by Pruet and Hughes Company, consists of three hundred and ten (310) acres, as Tract 11645, and is located just above the Giles Bend Cut-Off. Prior to the year 1933 and for many years earlier, the Mississippi River traveled in a loop to the west around what is known as Cowpen Point, Mississippi. For numerous reasons, including flood control and navigation, the United States Corps of Engineers constructed, in 1933, a cut-off across the neck of Cowpen Point. Work was done on this cut-off during the year of 1933 and intermittently during 1934 through 1938 until, as a result of yearly high water, avulsive action took place effectively eliminating Giles Bend as the main course of the Mississippi River.

XVII.

As a result of the construction of the Giles Bend Cut-Off by the United States Corps of Engineers and the avulsive activity of the Mississippi River, a permanent state boundary was established in the old bed of the Mississippi River. As a result of the permanence of said state boundary, the rights of both Louisiana and Mississippi as well as its citizens have become vested.

XVIII.

Nevertheless, complainant in Exhibit "B," alleges that the thalweg of the Mississippi River has migrated to the west, thereby obliterating the said permanent boundary and placing State of Louisiana Well No. 3 within the State of Mississippi.

XIX.

The State of Louisiana avers that the thalweg of the Mississippi River has not migrated to such an extent that it has placed State of Louisiana Well No. 3 within the confines of the State of Mississippi and, in any event, said migration can have no effect upon the permanent state boundary as established in the old meander of the Mississippi River.

XX.

Consequently, in the necessary and essential exercise of sovereign rights, the exact location of the boundary line between Mississippi and Louisiana in the area involved becomes of major and substantial significance to the respective states, in view of the great value of oil, gas and other minerals now known to exist at their respective borders. Heretofore, it has not been necessary to determine with preciseness the exact location of such boundary line.

XXI.

As a direct and current result of the filing of the Complaint made Exhibit "B" hereto, extremely

valuable rights owned by the State of Louisiana have been placed in jeopardy. At the same time, the now-known existence of such valuable property below the surface of the Mississippi River opens many avenues of possible conflict between the two states, growing out of the need for regulatory practices through their respective agencies in drilling, operating, and producing of oil and gas, so that these resources may be conserved and at the same time the rights of all parties in any common pool or reservoir be recognized and protected.

XXII.

On July 20, 1979 the defendants named in *Dille vs. Pruet and Hughes Company, et al* filed a motion to remove the said case to the United States District Court for the Southern District of Mississippi, Western Division which suit is numbered W79-0069(R). A true and correct copy of said removal is attached hereto and made a part hereof and is marked Exhibit "C."

XXIII.

The property rights and the sanctity of the boundary of the State of Louisiana are inextricably involved in the private litigation thus instituted and pending in the United States District Court for the Western Division of the Southern District of the State of Mississippi, and said Court is not the forum proper to such determinations. Nor is the State of Louisiana required to submit its title to said Court, nor should it be. The decision of

the Supreme Court of the United States herein will be conclusively binding on all private parties and it alone has the power to fix and determine the boundary lines herein set forth. The suit of *Dille vs. Pruet and Hughes Company, (A Partnership), et al* should be stayed by Order of this Court until a final judgment herein can be had, and application is hereby made by the State of Louisiana for an Order to be issued by this Court, directed to the United States District Court, Western Division of the Southern District of Mississippi, staying all proceedings in said suit.

XXIV.

The jurisdiction of the Supreme Court of the United States in boundary disputes between States is exclusive and original and accordingly, it is appropriate that the suit of *Dille vs. Pruet and Hughes Company, (A Partnership), et al* be stayed and all parties thereto be served with a copy of the Stay Order herein applied for, and be given the opportunity to assert such interests as they may have in this action.

WHEREFORE, PREMISES CONSIDERED, Complainant prays:

1. That process issue herein to all parties as required by law.

2. That an order be issued promptly to the United States District Court for the Western Division of the Southern District of the State of Mississippi, staying any further proceedings in the suit of *Dille vs. Pruet and Hughes Company (A Partnership), et*

al C.A. No. W79-0069(R), on the docket of said Court, until final judgment has been rendered herein or until further order of this Court.

3. That, on final hearing hereof, the eastern boundary line of the State of Louisiana at Giles Bend Cut-Off, including the permanent boundary as established in Giles Bend, should be recognized as fixed and determined, the Court to further adjudicate that the State of Louisiana Well No. 3, herein before specifically described, is and has been since its completion on or about January 15, 1972 is and has been located within the State of Louisiana.

4. That the claim of right and title asserted by Avery B. Dille, Jr. in and to the above said well and the proceeds thereof be herewith cancelled and forever held for naught.

And for such other and further relief, general or special, as may be proper.

Respectfully submitted,

/s/ William J. Guste, Jr.
WILLIAM J. GUSTE, JR.
Attorney General
State of Louisiana

GARY L. KEYSER
DAVID C. KIMMEL
Assistant Attorneys General

December
October, 1979

**BRIEF OF THE STATE OF LOUISIANA IN SUP-
PORT OF ITS MOTION FOR LEAVE TO FILE
ORIGINAL SUIT AND FOR STAY ORDER**

OPENING STATEMENT

As set forth in the Motion with Complaint annexed herein filed by the State of Louisiana, the proposed suit involves a determination of the exact location of a portion of the eastern boundary line of the State of Louisiana common with the State of Mississippi and the cancelling of the claims of certain named private parties to property rights of the State of Louisiana under the bed of the Mississippi River.

I.

JURISDICTION OF SUITS BETWEEN STATES

The Supreme Court of the United States has exclusive original jurisdiction of all controversies between states. As set forth in Par. 2, Sec. 2, Article III of the Constitution:

“In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be a party, the Supreme Court shall have original jurisdiction.”

As set forth in Section 1251, Title 28, U.S.C.A.(a);

“(a) The Supreme Court shall have original and exclusive jurisdiction of all controversies between two or more states.”

II.

THE MOTION FOR LEAVE TO FILE SHOULD BE GRANTED

Jurisdiction vests since this is a suit between the States of Louisiana and Mississippi in which private persons are also proper parties due to the nature of the boundary dispute.

The value of the property involved is great. The rights of the State of Louisiana are real and substantial. The controversy exists and is justiciable. The Supreme Court of the United States is the only forum to settle this dispute, fix the boundary line between the states, and determine finally the rights of the parties. See *Florida v. Georgia*, 17 How. 478 (1854); *Oklahoma v. Texas*, 158 U.S. 574, 66 L. Ed 771, 42 Sup. Ct. 406 (1922).

III.

POWER TO STAY

In the aid of its original jurisdiction, the Supreme Court has the power and authority to issue stays not only inherently but also by Sec. 1651, Title 28 U.S.C.A.(a) which reads:

“(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.”

See *Ex Parte Republic of Peru*, 318 U.S. 578, 87 L. ed 1014, 63 S. Ct. 793 (1943).

As stated in *Landis v. North American Co.*, 299 U.S. 248, 81 L. ed. 153, 57 S. Ct. 163 (1936):

"Apart, however, from any concession, the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.

Respectfully submitted,

/s/ *William J. Guste, Jr.*
WILLIAM J. GUSTE, JR.
Attorney General
State of Louisiana

GARY L. KEYSER
DAVID C. KIMMEL
Assistant Attorneys General

APPENDIX

EXHIBITS:

- "A"—Oil, gas and mineral lease from the State of Louisiana to Dave Gammill (State Lease No. 5544), dated July 8, 1970.
- "B"—Complaint in case of *Avery B. Dille, Jr. vs. Pruet and Hughes, (A Partnership), et al*, No. 28,592, Chancery Court of Adams County, Mississippi.
- "C"—Case of *Avery B. Dille, Jr. vs. Pruet and Hughes Company, (A Partnership), et al*, C.A. No. W79-0069(R), Western Division of the Southern District of Mississippi.

PROOF OF SERVICE

The undersigned, counsel for the State of Louisiana, and a member of the Bar of the Supreme Court of the United States, hereby certifies that copies of the foregoing Motion of the State of Louisiana for leave to file original action with Complaint and Brief annexed, have been served by depositing same in a United States mailbox with postage prepaid, addressed to:

HON. A. F. SUMMERS
Attorney General
State of Mississippi
State Capitol
Jackson, Mississippi 39205

MR. M. EMMETTE WARD
Ward, Martin, Terry and Way
Attorneys at Law
Post Office Box 789
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Attorney for Avery B. Dille, Jr.

this 19th day of December ~~October~~, 1979.

19 Gary L. Keyser
GARY L. KEYSER
Assistant Attorney General